ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 885 OF 1999

M/s.Choudhary Metal Syndicate ...Petitioners

Vs.

M/s. Arjandas Metal Industries Pvt. Ltd. ...Respondents.

Mr. R.D.Dave i/by M/s. N.N. Vaishnawa & Co. for the petitioners.

Mr. K.T.Kukreja i/by Kukreja & Co. for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 11th October, 2007.

P.C.

1. As respondent company failed to pay the amount claimed by the petitioners, the provisions of Sections 433 and 434 of the Companies Act, have been invoked by this present petition. On 17th January, 2000 the petition was admitted and ordered to advertise. None appeared for the respondent company at that time. The learned counsel appearing for the petitioners further made statement that there was a petition pending advertisement at any point of time. The respondent company has filed reply to this company petition dated 13th September, 2007 and resisted that claim. The specific defence is that the petitioners have admittedly filed suit No. 268 of 1999 in respect of the same claim. An ex-parte decree dated 10th July,

2000 thereafter, also set aside by consent. By order dated 12th August, 2003 the Court has granted unconditional leave to defend the suit.

2. After considering the reply and in view of the fact that the Court has already granted unconditional leave and the same suit is still pending, I am of the view that this is not the case where the company Court should exercise discretion in favour of the petitioner as various disputed questions of facts involved and the same unless finalized and settled, the claim as such cannot be entertained at this stage of the proceedings as initiated by the petitioner.

3. However, keeping all points open, the present company petition is disposed of, with liberty.

(ANOOP V. MOHTA, J.)